

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DEREJE ASRAT DEGFU,

Petitioner,

v.

JASON BENNETT,

Respondent.

Case No. 2:24-cv-01275-JNW-TLF

REPORT AND
RECOMMENDATION

Noted for November 7, 2024

The District Court has referred this action to United States Magistrate Judge Theresa L. Fricke. On August 15, 2024, petitioner filed a motion to proceed *in forma pauperis* (IFP) and a proposed habeas corpus petition nominally under 28 U.S.C. § 2241. Dkts. 3, 3-1.

After screening the petition pursuant to Rule 4 of the Rules Governing § 2254 cases, the Court concluded the petition was not properly filed under § 2241; the claims were required to be brought via habeas corpus under 28 U.S.C. § 2254. The petition on its face contained claims that were unexhausted. Dkt. 4. The Court ordered petitioner to show cause by October 25, 2024, why the petition should not be dismissed without prejudice for failure to exhaust state court remedies. *Id.* at 4. The Court advised petitioner if he failed to timely respond to the Order, the Court would recommend dismissal of this action. *Id.*

1 Petitioner has failed to respond and therefore failed to comply with the Court's
2 Order. As petitioner has failed to respond to the Court's Order and prosecute this case,
3 the Court recommends this case be DISMISSED without prejudice.

4 The Court further recommends that petitioner's motion to proceed IFP (Dkt. 3) be
5 DENIED as moot. Based on the foregoing, the Court also recommends a certificate of
6 appealability be DENIED.

7 Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall
8 have fourteen (14) days from service of this report to file written objections. *See also*
9 Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for
10 purposes of *de novo* review by the district judge, *see* 28 U.S.C. § 636(b)(1)(C), and can
11 result in a waiver of those objections for purposes of appeal. *See Thomas v. Arn*, 474
12 U.S. 140, 142 (1985); *Miranda v. Anchondo*, 684 F.3d 844, 848 (9th Cir. 2012) (citations
13 omitted). Accommodating the time limit imposed by Fed. R. Civ. P. 72(b), the Clerk is
14 directed to set the matter for consideration on **November 22, 2024**, as noted in the
15 caption.

16 Dated this 7th day of November, 2024.
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20 Theresa L. Fricke
21 United States Magistrate Judge
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